
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 1:07CV49 TS
Petitioner,	:	
v.	:	REPORT AND RECOMMENDATION
THARON JOE VALENCIA,	:	Judge Ted Stewart
	:	Magistrate Judge Paul M. Warner
Respondent.	:	

The United States of America filed a petition to enforce its two February 7, 2007 IRS Summonses ("the Summonses") pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Stewart issued an Order to Show Cause on April 10, 2007, which referred this matter to the undersigned under 28 U.S.C. § 636(b)(3).

In the Order to Show Cause ("OTSC"), Respondent was directed to file a written response supported by sworn affidavits to the United States' Petition to Enforce the Summons ("the Petition") within ten days of the OTSC being served upon him. The OTSC informed Respondent that only those issues raised in the written response and supported by sworn affidavits would be considered by the Court and that all allegations in the Petition not contested by the written response and sworn statements would be deemed admitted. The OTSC also directed the undersigned to convene a hearing on June 4, 2007 at 10:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause. Based on the arguments and representations presented in the Petition and at the above-mentioned hearing, the undersigned reports the following:

1. The United States carried its burden of proof to enforce the IRS Summonses at issue. Through the affidavits of the revenue officer that were attached to the Petition, the United States

established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the United States followed proper administrative procedures.

2. Once the United States established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the IRS Summonses. Respondent provided a written response to the OTSC and the Petition, however, the legal arguments contained therein have all been rejected by several courts as patently frivolous. See, e.g. Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990). Respondent's meritless legal arguments fail to carry his heavy burden to show cause as to why he should not be compelled to comply with the IRS Summonses at issue in this action. At the June 4th hearing, Respondent failed to provide any legitimate reason that would excuse him from not complying with the IRS Summonses.

Consequently, the undersigned recommends that:

1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and

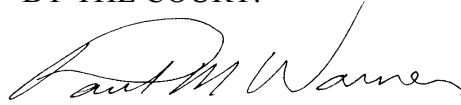
2. The District Court order Respondent to provide the IRS with the information required by the Summonses within 20 days from the date that the District Court adopts this Report and Recommendation. The IRS offices are located at 50 South 200 East, Salt Lake City, Utah 84111.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The

District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 4th day of June, 2007.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner". The signature is written in black ink and is positioned above a horizontal line.

PAUL M. WARNER, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing Report and Recommendation was mailed, postage prepaid, this 4th day of June 2007 to the following:

Tharon Joe Valencia
P.O. Box 0435
Brigham City, UT 84302

/s/ Jared C. Bennett